IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10709 of 2001
With
SPECIAL CIVIL APPLICATION No. 7032 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PN JOSHI - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MS SANGITA VISHEN, AGP for Respondent(s)
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/03/2006

ORAL JUDGMENT

1.Since similar issues of law and facts are involved in these two petitions, they have been heard together and are being disposed of by this common order.

2.Facts in nut-shell need to be noted at the outset:

2.1Petitioner in Special Civil Application No.10709 of 2001 was appointed as a Clerk in the General Administration Department of the State Government on 5.6.1962. He was thereafter appointed as Gujarati Stenographer Grade-II pursuant to the selection made by the Gujarat Public Service Commission (GPSC for short) on 17.11.64. In 1966, he passed the qualifying examination conducted by the GPSC for being considered for appointment to the post of Gujarati Stenographer Grade I. The petitioner was actually promoted as Gujarati Stenographer Grade I on 25.3.77.

2.2So far as the service career of petitioner in Special Civil Application No.7032 of 2001 is concerned, he was appointed as Gujarati Typist on 20.9.1960, promoted as Gujarati Stenographer Grade II in the year 1965 after passing the qualifying examination conducted by the GPSC. He passed the qualifying examination for Gujarati Stenographer Grade I in the year 1966. He was promoted as Stenographer Grade I on 25.3.77.

3.It appears that in the year 1973, the State Government appointed persons as direct recruits to the post of Gujarati Stenographer Grade-I. The petitioners made representation that the Government should also give

matching number of promotions to the departmental candidates. Pursuant to their representation, the State Government passed order on 18.12.79 granting them deemed date of promotion/appointment on the post of Gujarati Stenographer Grade I of 12.4.73. In the meantime, it may also be noted that by an order dated 10.3.76, the petitioners were exempted from passing the stenography test required for promotion to the post of Stenographer Grade I.

4. Many years passed after the State Government passed the said order dated 18.12.79 granting deemed date of promotion to the petitioners. No objection was raised by the direct recruits presumably because the petitioners were placed below the said direct recruits of 1973 in the seniority list. The petitioners therefore, continued to discharge their duties on the promotional posts and continued to receive their pay and other allowances on the basis of such deemed promotions. Suddenly in the year 2001, by the impugned order dated 19.7.2001, the earlier order dated 18.12.79 came to be withdrawn. The reasons indicated in the order dated 19.7.2001 for withdrawal of the order dated 18.12.79 were that exemption was granted to the petitioners on 10.3.76 which was to be operated

prospectively and that in the order dated 18.12.79, the Authority breached the Government instructions covering the situation for grant of deemed date of promotion. On all these grounds, the respondent found it appropriate to withdraw its earlier order dated 18.12.79. In the order dated 19.7.2001, care was taken to provide that the pay and allowances already paid to the petitioners will not be recovered.

5. The petitioners filed the present petitions and challenged the impugned order. This Court granted stay against its implementation. At one sage, Special Civil Application No.10709 of 2001 came to be disposed of by the learned single Judge of this Court directing the State Government to grant hearing to the petitioner therein since the impugned order was passed without hearing the petitioner. Subsequently, however, upon the order passed by the Hon'ble Supreme Court, the petition came to be revived.

6. It is not in dispute that in the year 1979, the State Government upon the representation made by the petitioners granted certain benefits of pre-dating their date of promotion to the post of Stenographer Grade I. The reason behind accepting the request of the petitioners at the relevant time appears to be

that in the year 1973, the State Government resorted to direct recruitment to the post of Gujarati Stenographer Grade I. The petitioners requested for considering them for promotion to maintain a ratio of 1 : 1 in the said cadre. The petitioners were already working in the State Government as Gujarati Stenographer Grade II since many years and later on were promoted as Stenographer Grade I having been found suitable for promotion. Nearly 22 years after such concession was granted to the petitioners, the State Government passed the impugned order. Though the said order was passed without affording an opportunity of being heard to the petitioners, as stated by the Hon'ble Supreme Court in the appeal filed by the petitioner of Special Civil Application No.10709 of 2001, the contention with respect to breach of principles of natural justice has not been placed in service by either of the petitioners and the petitions have been considered on merits.

7. To continue with the narration of events, it would appear that the petitioner of Special Civil Application No.10709 of 2001 was to retire from 30th April 2002 i.e. less then a year after the Government passed the impugned order. Thus having received the benefits of the Government order right from the year 1979, the said

petitioner was given a jolt at the fag end of his career when virtually he was on the verge of his retirement. In case of petitioner in Special Civil Application No.7032 of 2001, facts are even more glaring. He had enjoyed the benefits of the order passed by the State Government in December 1979 and retired from Government service at the end of May 1997. More than four years after his retirement, his pay and allowances were being refixed by the Government since in the view of the Government, the order which was passed in the year 1979 was erroneous. Thus 22 years after the order was passed and more than 4 years after the employee retired, his pay fixation was sought to be altered to his disadvantage. In my view, in the facts of the present case, quite apart from the legality of the stand of the Government, permitting the Government to refix the pay and allowance of the petitioners would be unjust, impermissible and harsh. It is true that the State Government has indicated that pursuant to the impugned order, there would be no recovery of the pay and allowances already paid to the petitioners, such refixation would have substantial bearing on their pension entitlement. It would be highly inequitable to permit the Government to adversely affect the

pension of the petitioners in the facts of the present case.

8. In the result, the petitions are allowed. The impugned orders both dated 19th July 2001 produced at Annexure A to the respective petitions are quashed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)